

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 18352 of 2017

and

CRL. MP. No.11206 of 2017

1. Rajavelu,

2. Poongothai ... Petitioners/Accused 3 & 4

Vs.

1.The Inspector of Police,
Thirubuvanai Police Station,
Puducherry.

2.V. Thirunavukarassu,

... Respondents/Defacto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records relating to the FIR No.63/07 dated 29.06.2017 pending investigation on the file of the first respondent police.

For Petitioner : Mr.K.Sasindran

For Respondent-1: Mr.V. Balamurugane

Additional Public Prosecutor (Puducyerry)

For Respondent-2 : No appearance.

O R D E R

The petition has been filed to quash the F.I.R. No.63 of 2017 dated 29.06.2017 on the file of the first respondent registered under Sections 120-B, 494,495,497 of I.P.C and r/w. 34 of I.P.C.

2. The learned counsel for the petitioner would submit that there are four accused in the F.I.R wherein the petitioners are 3rd and 4th accused who are parents of the second accused. The entire dispute is between the defacto-complainant and the second

accused being husband and wife. The allegation in the F.I.R. is that the second accused wife of the defacto-complainant having illegal relationship with the first accused and also married him during the subsistence of the first marriage. Further, he submitted that the offences under Sections 120-B, 494, 495, 497 of I.P.C. and r/w. 34 of I.P.C. relates to the marital affairs between husband and wife relationship and further, there is no role for the parents of the spouse in the said offence as well as the first respondent has no power to take cognizance under Section 198 Cr.P.C. unless there is a specific order by the Magistrate concerned under Section 155(2) of Cr.P.C.

3. No representation on behalf of the second respondent/defacto-complainant.

4. The learned Public Prosecutor, Pondyerry would submit that there are total four accused registered in the F.I.R in which the petitioners herein arrayed as A3 & A4. The Second accused is the wife of the defacto-complainant and the daughter of the petitioners herein. The second respondent/complainant lodged a complaint before the first respondent, his wife/second accused married the first accused having illegal relationship with him during the subsistence of first marriage. In this regard, the petitioners/A3&A4 have also been registered under these Sections to accomplice with the first and second accused in the second marriage during the subsistence of the first marriage.

5. Admittedly, the entire dispute is family dispute between the defacto-complainant and the second accused being husband and wife. The allegation is that the second accused had illegal relationship with the first accused. Thereafter, she also married the first accused. When the complaint lodged by the defacto-complainant, the first respondent registered the case for the offence under Sections 120-B, 494, 495, 497 of I.P.C. and r/w. 34 of I.P.C against the petitioners. As pointed out by the learned counsel for the petitioner, the registered offences are related to marital affairs.

6. To appreciate the contention raised by learned counsel for the petitioner Section 198(1) needs extraction :

Section 198 : Prosecution for offences against marriage. (I) No Court shall take cognizance of an offence punishable under XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

Provided that--

(a) Where such person is under the age of eighteen

years, or is an idiot or a lunatic, or is from a sickness or infirmity unable to make a complaint, or is a woman who according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) Where such a person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of Sub-section (4) may make a complaint on his behalf;

(c) Where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code is the wife, complaint may be made on her behalf by her father, mother, brother, or sister, or with the leave of the Court, by any other person related to her by blood, marriage or adoption, son or daughter or by her father's or mother's brother or sister, (2) For the purpose of Sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 498 of the said Code;

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

In view of the above, without any order under Section 198 Cr.P.C. passed by the concerned Jurisdiction Magistrate, Police officer cannot register the case and take cognizance offence against the petitioners. Therefore, the first respondent has no power to register the complaint for the offence under Sections 120-B, 494, 495, 497 of I.P.C. and r/w. 34 of I.P.C..

7. Resultantly, this Criminal Original Petition is allowed, and the proceedings in F.I.R. No. 63/2017 shall stand quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

lbm

To:

1.The Judicial Magistrate IV,
Puducherry.

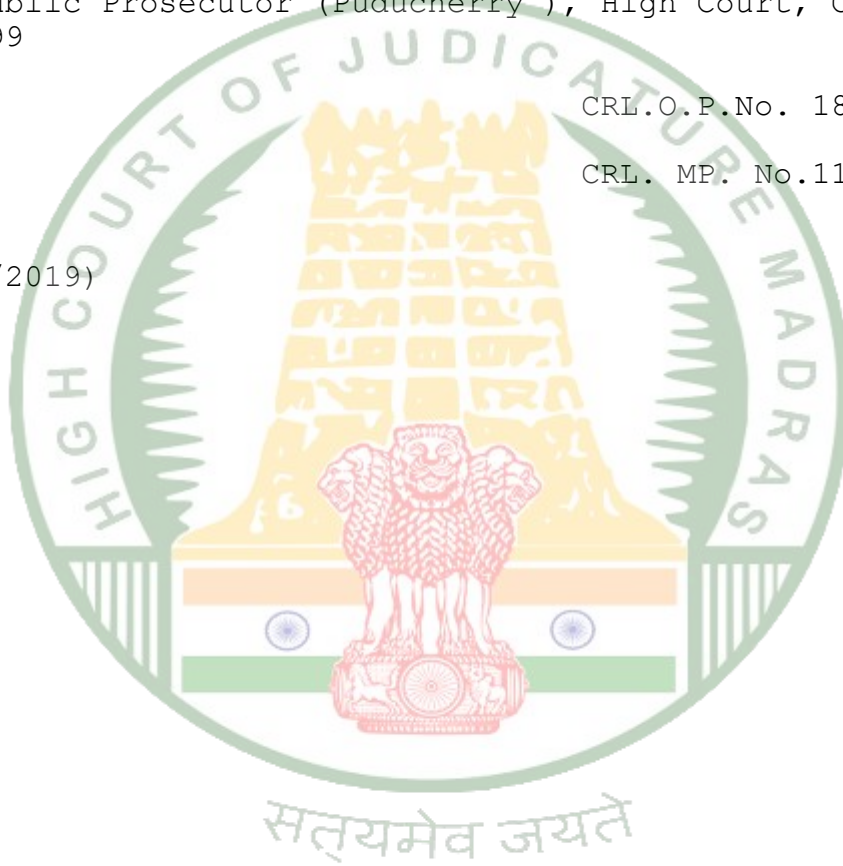
2.The Inspector of Police,
Thirukkanur Police Station,
Puducherry.

+lcc to Mr.K.Sasindran, Advocate SR.No.27974

+lcc to Public Prosecutor (Puducherry), High Court, Chennai
SR.No.27699

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VGII (CO)
GMY (29/04/2019)



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